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H I P A A n o t e -- Volume 2, Number 33 -- August 28, 2002

>>From Phoenix Health Systems--HIPAA Knowledge--HIPAA Solutions<<
=>Healthcare IT Consulting & Outsourcing<=

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PUTTING THE PRIVACY CHANGES TO WORK:
A "How-To" Guide to the August 2002 HIPAA Privacy Rule Modifications
AudioConference

60-minute audio conference + slides

** Wednesday, September 25 at 2:00 PM **

For more information or to register, go to
<http://www.HIPAAAdvisory.com/ezcart/index.cfm>

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This week's HIPAAnote...

*** The "HIPAAmark": Limiting your risk when releasing PHI ***

"Out of sight, out of mind (but not out of reach)!"

The rules are clear-release by a covered entity of protected health information (PHI) to anyone other than a patient (or his or her designated representative) or one of the listed exceptions requires a signed Authorization. Unfortunately, once PHI is released beyond your control, you incur a risk that the information will be disclosed inappropriately. If a patient complains about an unauthorized disclosure, it will be up to the covered entity to prove that its processes were not responsible. Given the expense of defending against a potential flood of complaints, you will need to quickly identify if PHI was under your organization's control at the time of release.

Examples of the extremes that may await you: With sports teams wrestling with the issue of how to report player injuries, some suggest that the gambling community will use extraordinary measures to learn the condition of an injured player. Similarly, other injured or ill high-profile patients will continue to be the focus of the press, HIPAA or no HIPAA. Hospital staff, team members, and visitors will all be targets of probes from the press and others. If a copy of Joe or Jane's medical records magically appears at the local press club or worse, the evidence room, you should be able to show that any releases of PHI by your organization were clearly made within the scope of HIPAA rules.

One quick way to quickly remove suspicions about your organization is to clearly identify any release of PHI as being legally released to another entity. This could be another covered entity, a Business Associate, an excepted entity (such as law enforcement or public health officials), or even the patient. For paper records,

consider affixing a watermark, or "HIPAAMark" to the record stating that it was released to the patient, authorized Business Associates, or others officially excepted from HIPAA limitations - and document that you have done so. If the patient or other recipient further releases the information, or if it is later stolen, your organization should not have liability under HIPAA.

"This won't hurt a bit"

There are easy ways to attach a "HIPAAMark" to a document. Take the case of patient releases of PHI. When you make copies, create a clear slide stating "Released to Patient," add the date released, and place it on the copier's glass before making copies to be released to the patient or designated representative. If these documents show up later in other hands, a covered entity can make the argument that it had no control over materials once they were transferred to the patient. Smaller offices can opt for a slightly lower-tech solution: purchase a custom hand stamp, available at most office supply stores. If your organization experiences a high volume of releases, it might make further sense to purchase a different type or color of printer paper to be used only for such copies. Very large covered entities may even explore having their own customized "HIPAAMark" preprinted on their paper or programming the printer to print the "HIPAAMark" at the top or bottom of the applicable documents. The solution can be simple, but the rewards can be great.

Clyde Hewitt, Principal
Phoenix Health Systems

That's today's HIPAAnote...now, pass it along!

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HIPAAnotes are published weekly as a learning tool to help you and your associates stay tuned-in to HIPAA and its implications. Forward it to anyone with a "need to know" through your own internal mailing list, intranet or newsletter -- whatever works for you...

Our HIPAAcratic oath: We'll use your ideas for HIPAAnotes -- send them!
Email D'Arcy Gue, Editor: info@phoenixhealth.com

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